



Division of
Enforcement

COMMODITY FUTURES TRADING COMMISSION

Chicago Regional Office
77 W. Jackson Blvd., Suite 800
Chicago, Illinois 60604
Telephone: (312) 596-0700
Facsimile: (312) 596-0714

Carlin R. Metzger
Senior Trial Attorney
(312) 596-0536
cmetzger@cftc.gov

February 8, 2023

Via CM/ECF

The Honorable P. Kevin Castel
United States District Judge
United States District Court for the Southern District of New York
500 Pearl Street,
Courtroom: 11D
New York, NY 10007

Re: Joint Pretrial Conference Letter
Commodity Futures Trading Commission v Samuel Bankman-Fried, et al.,
No. 22-cv-10503(PKC) [rel. 22-cv-10501(PKC) and 22-cv-10794(PKC)]

Dear Judge Castel:

The parties submit this joint letter as required by the Court's December 15, 2022 Initial Pretrial Conference Order, Dkt. No. 9. The Initial Pretrial Conference is scheduled for **February 15, 2023 at 12:00 p.m.** The United States Attorney for the Southern District of New York ("SDNY") has recently moved to stay this matter, including a stay of all discovery, until the conclusion of a parallel criminal case. (Dkts. Nos. 32, 33.)

(1) Brief Description of the Case

Plaintiff Commodity Futures Trading Commission ("CFTC") filed its Complaint on December 13, 2022 (Dkt. No. 1) against Defendants Samuel Bankman-Fried, FTX Trading Ltd and Alameda Research LLC. The CFTC filed an Amended Complaint on December 21, 2022 (Dkt. No. 13), adding as defendants Caroline Ellison and Zixiao (Gary) Wang. The CFTC's Amended Complaint charges the Defendants with engaging in fraud in violation of the Commodity Exchange Act (the "Act") and CFTC Regulations in connection with the operation of the FTX digital asset exchange. Specifically, the Amended Complaint charges:

- Count 1:* Fraud in violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) and CFTC Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1) and (3) against all Defendants;
- Count 2:* Fraudulent misstatements of material fact and material omissions in violation Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) and CFTC Regulation 180.1(a)(2), 17 C.F.R. § 180.1(a)(2) against Defendants Bankman-Fried, FTX Trading Ltd and Alameda Research LLC.

All Defendants have waived service of the summons and complaint. The Court has entered Consent Orders of Judgment on Liability against Defendants Wang and Ellison (Dkt. Nos. 25 and 26), reserving the issues of relief or remedies pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, for separate determination. The current deadline for the corporate entity defendants, FTX Trading Ltd and Alameda Research LLC, to respond to the Amended Complaint is February 13, 2023. The current deadline for defendant Bankman-Fried to respond to the Amended Complaint is March 10, 2023.

(2) Related Cases

In related criminal actions pending before Judge Kaplan:

- Defendant Samuel Bankman-Fried was charged in an indictment with, among other things, conspiracy to commit commodities fraud in violation of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1. *United States of America v. Samuel Bankman-Fried*, 22 Cr. 673 (LAK);
- Defendant Zixiao (Gary) Wang was charged in an information with, among other things, conspiracy to commit commodities fraud in violation of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1. *United States of America v. Zixiao (Gary) Wang*, S1 22 Cr. 673 (LAK); and
- Defendant Caroline Ellison was charged in an information with, among other things, conspiracy to commit commodities fraud in violation of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1. *United States of America v. Caroline Ellison*, S2 22 Cr. 673 (LAK).

Wang and Ellison have entered guilty pleas to the charges against them in the criminal action. Trial in the criminal action against Mr. Bankman-Fried is scheduled to begin on October 2, 2023.

Defendants Bankman-Fried, Wang and Ellison are also defendants in related civil actions pending before this court filed by the Securities and Exchange Commission: *Securities and Exchange Commission v. Samuel Bankman-Fried*, 22-cv-10501 (PKC) and *Securities and Exchange Commission v. Caroline Ellison and Zixiao (Gary) Wang*, 22-cv-10794 (PKC). The Court has entered partial judgments against Wang and Ellison in the related case brought by the Securities and Exchange Commission.

The corporate entity defendants, FTX Trading Ltd and Alameda Research LLC, are debtors in a Chapter 11 bankruptcy case pending in the United States Bankruptcy Court for the District of Delaware, jointly administered as *In re FTX Trading Ltd., et al.*, Case No. 22-11068 (JTD).

(3) Pending Motion to Intervene and Stay and Other Contemplated Motions

The United States Attorney's Office for the Southern District of New York has filed a Motion to Intervene and Stay this action based on the pending related criminal proceeding against Mr. Bankman-Fried. (Dkt. Nos. 32, 33.) As noted in the motion, Defendants consent to a stay of this action. The CFTC does not object to the motion to intervene and takes no position on the motion to stay at this time.

The corporate entity defendants, FTX Trading Ltd and Alameda Research LLC, have a deadline of February 13, 2023 to respond to the CFTC's Amended Complaint. Absent the entry of an order staying this proceeding before February 13, 2023, the corporate entity defendants and the CFTC

intend to file a stipulation and proposed order extending the corporate entity defendants' time to answer or otherwise respond to the CFTC's Amended Complaint.

Defendant Bankman-Fried has a deadline of March 10, 2023 to respond to the CFTC's Amended Complaint. Absent the entry of an order staying this proceeding, defendant Bankman-Fried and the CFTC intend to file a stipulation and proposed order extending defendant Bankman-Fried's time to answer or otherwise respond to the CFTC's Amended Complaint.

(4) Prospects for Settlement

As noted above, the Court has entered Consent Orders of Judgment on Liability against Defendants Wang and Ellison (Dkt. Nos. 25 and 26), reserving the issues of relief or remedies pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, for separate, subsequent determination. The parties anticipate further productive settlement discussions following the resolution of the related criminal actions.

Respectfully,

Attorney for CFTC

/s/ Carlin R. Metzger

Carlin R. Metzger
Commodity Futures Trading Commission
Ralph Metcalfe Federal Building
77 W. Jackson Blvd., Suite 800
Chicago, Illinois 60604
(312) 596-0536
cmetzger@cftc.gov

Attorney for Samuel Bankman-Fried

/s/ S. Gale Dick

S. Gale Dick
Cohen & Gresser LLP
800 Third Avenue,
New York, NY 10022
(212) 707-7263
sgdick@cohengresser.com

Attorney for Gary Wang

/s/ Ilan T. Graff

Ilan T. Graff
Fried, Frank, Harris, Shriver & Jacobson
One New York Plaza
New York, New York 10004-1980
(212) 859-8000
Ilan.graff@friedfrank.com

Attorney for FTX Trading Ltd. and Alameda Research LLC

/s/ James M. McDonald

James M. McDonald
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004
(212) 558-4000
mcdonaldj@sullcrom.com

Attorney for Caroline Ellison

/s/ Stephanie Avakian

Stephanie Avakian
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Ave. NW
Washington DC 20006
(202) 663-6417
Stephanie.avakian@wilmerhale.com